UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

HAMBURG-SUD NORTH AMERICA, INC. and HAMBURG SUDAMERIKANISHE DAMPFSCHIFFAHRTS GESELLSCHAFT KA.,

Plaintiffs,

-against-

AMERICAN INDEPENDENT LINE, INC. and BRASIL CARGO SERVICES LOGISTICA, LTD. and BOMIX INDUSTRIA DE EMBALAGENS LTDA.,

Defendants.

Index No: 10-cv-4559 (KAM)

VERIFIED ANSWER TO AMENDED VERIFIED COMPLAINT AND VERIFIED CROSS-CLAIM FOR DECLARATORY JUDGMENT TO DETERMINE ENFORCEABILITY OF CONTRACT TERMS AND CONDITIONS

Defendant/Respondent/Petitioner, American Independent Line, Inc. ("AIL" or "Defendant"), by and through its attorneys, Holland & Knight LLP, as for its Verified Answer to the Amended Verified Complaint of Plaintiff Hamburg-Sud North America, Inc. and Hamburg Sudamerikanishe Dampfschiffahrts Gesellschaft KA (together "Plaintiffs"), respectfully states upon information and belief:

- 1. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 1 of the Amended Verified Complaint.
- 2. Admits that Hamburg-Sud North America Inc. issued bill of lading no. SUDU280017845018 dated December 7, 2008. Denies that the goods shipped were the goods of AIL. Except as so admitted, denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 2 of the Amended Verified Complaint.

- 3. Admits that AIL is within the personal jurisdiction of this Court. Except as so admitted, denies the remaining allegations in paragraph 3 of the Amended Verified Complaint.
- 4. Admits that the address of Brasil Cargo Services is Praca Barao Do Rio Branco, NR 14-7 Andar Sala 74, Centro Santos/SP Brasil CEP: 11010-040. Except as so admitted, denies having knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 4 of the Amended Verified Complaint.
- 5. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 5 of the Amended Verified Complaint.
- 6. Admits that Plaintiffs' claims are admiralty or maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court pursuant to 28 U.S.C. § 1333(1).
- 7. Admits that AIL issued bill of lading no. AILW8644992 in Great Neck, New York. Except as so admitted, denies having knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 7 of the Amended Verified Complaint that do not pertain to AIL.
 - 8. Paragraph 8 contains a legal conclusion as to which no answer is required.
- 9. The terms of bill of lading no. SUDU280017845018 dated December 7, 2008 speak for themselves, thus no answer to paragraph 9 is required.
- 10. The terms of bill of lading no. SUDU280017845018 dated December 7, 2008 speak for themselves, thus no answer to paragraph 10 is required.
- 11. The terms of bill of lading no. SUDU280017845018 dated December 7, 2008 speak for themselves, thus no answer to paragraph 11 is required.
 - 12. Paragraph 12 contains a legal conclusion as to which no answer is required.

- 12. Paragraph 12 contains a legal conclusion as to which no answer is required.
- 13. The terms of the U.S. Carriage of Goods by Sea Act, 46 U.S.C. § 30701 (notes) ("COGSA") speak for themselves. The remaining allegation of paragraph 13 contains a legal conclusion as to which no answer is required.
- 14. The terms of COGSA speak for themselves, thus no answer to paragraph 14 is required.
- 15. The terms of COGSA speak for themselves, thus no answer to paragraph 15 is required.
- 16. The terms of COGSA speak for themselves, thus no answer to paragraph 16 is required.
- 17. The terms of COGSA speak for themselves, thus no answer to paragraph 17 is required.
- 18. Denies the allegations in paragraph 18 of the Amended Verified Complaint as they pertain to AIL. Admits that Bomix disputes and objects to the applicability and enforceability of 46 U.S.C. § 30701, Notes §§ 4(5) and 3(6). Except as so denied and admitted, denies having knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 18 of the Amended Verified Complaint that do not pertain to AIL.
- 19. Denies the allegations in paragraph 19 of the Amended Verified Complaint as they pertain to AIL. Admits that Bomix disputes and denies that U.S. COGSA governs the carrier's rights, duties, responsibilities, defenses and limitations during the period of the carrier's responsibility for the goods shipped under the contract, and/or that the carrier shall not in any event be liable for any loss or damage to or in connection with transporting the shipper's goods in

excess of \$500 per package or customary freight unit. Except as so denied and admitted, denies having knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 19 of the Amended Verified Complaint that do not pertain to AIL.

- 20. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 20 of the Amended Verified Complaint.
- 21. The terms of bill of lading no. SUDU280017845018 dated December 7, 2008 speak for themselves, thus no answer to paragraph 21 is required.
- 22. The terms of bill of lading no. SUDU280017845018 dated December 7, 2008 speak for themselves, thus no answer to paragraph 22 is required.
- 23. Admit that the goods stowed in container SUDU970013-3 (one 40' flatrack container) were damaged while the *Libra Corcovado* was calling at the port of Norfolk, Virginia. Except as so admitted, denies the remaining allegations set forth in paragraph 23 of the Amended Verified Complaint.
- 24. Admits that the goods stowed in container SUDU970013-3 (one 40' flatrack container) were damaged in Norfolk, Virginia and not transported to Salvador, Brazil but instead returned to the factory and that the goods stowed in container IPXU399852-5 were transported to Salvador, Brazil. Except as so admitted, denies the remaining allegations set forth in paragraph 24 of the Amended Verified Complaint.
- 25. Paragraph 25 (erroneously numbered as paragraph 26) contains a legal conclusion as to which no answer is required.
- 26. Paragraph 26 (erroneously numbered as paragraph 27) contains a legal conclusion as to which no answer is required.

- 27. Paragraph 27 (erroneously numbered as paragraph 28) contains a legal conclusion as to which no answer is required.
- 28. Denies the allegations set forth in paragraph 28 (erroneously numbered as paragraph 29) of the Amended Verified Complaint as they pertain to AIL. The allegations set forth in paragraph 28 contain legal conclusions as to which no answer is required.
- 29. Denies that Plaintiffs are entitled to the relief sought against AIL as set forth in the *ad damnun* clause.

FIRST AFFIRMATIVE DEFENSE

30. AIL alleges, by way of an affirmative defense, that said shipments described in Plaintiffs' Amended Verified Complaint were subject to all the terms, conditions and exceptions contained in AIL bill of lading no. AILW8644992. Any shortage, loss or damage to the shipment was due to causes for which AIL was not liable or responsible by virtue of the provisions of the Carriage of Goods by Sea Act ("COGSA"), *reprinted in* notes following 46 U.S.C. § 30701 (formerly 46 U.S.C. § 1301 *et seq.*.), and/or the Harter Act, 46 U.S.C. §§ 30702-30707 (formerly 46 U.S.C. App. § 190 *et seq.*.) and/or the applicable AIL tariffs and/or provisions of the AIL bill of lading and/or the general maritime law of the United States.

SECOND AFFIRMATIVE DEFENSE

31. AIL alleges, by way of an affirmative defense, that any damage sustained or to be asserted by cargo interests was a result of the negligence or recklessness of other parties over which AIL had no control and/or for which AIL cannot be held liable.

THIRD AFFIRMATIVE DEFENSE

32. AIL alleges, by way of an affirmative defense, that it is entitled to indemnification from Hamburg-Sud North America Inc. for any and all damages for which it may ultimately be

found liable to cargo interests, which liability AIL denies, including reasonable attorneys' fees incurred in defending against any action brought by cargo interests against AIL.

CROSS-CLAIM FOR DECLARATORY JUDGMENT

Defendant/Respondent/Petitioner, by and through its attorneys Holland & Knight LLP, while denying that is it in any way obligated or liable for claims asserted by Plaintiffs, alleges by way of Cross-Claim/Petition for Declaratory Judgment against Defendant Bomix Industria de Embalagens Ltda ("Bomix") as follows:

- 33. AIL repeats and reallages each and every admission, denial, and denial for lack of knowledge or information sufficient to form a belief, as set forth in paragraphs 1 though 32 of its Verified Answer to the Amended Verified Complaint above with the same force and effect as if set forth at length herein.
- 34. The nature of this Cross-Claim/Petition is an action for declaratory judgment against co-defendant Bomix under 28 U.S.C. § 2201 of the Judicial Code for the purpose of determining a question in actual controversy between the parties, namely the validity of certain Terms and Conditions of a written contract for services provided by AIL to Bomix in connection with the ocean transportation of Bomix's goods from the United States to Brazil.
- 35. As is set forth in more detail below, AIL's Cross-claim/Petition against Bomix arises out of the same transaction or occurrence that is the subject matter of Plaintiffs' original action.
- 36. The written contract upon which this Cross-claim/Petition is based is AIL bill of lading no. AILW8644992, dated December 7, 2008, a contract of carriage which provided for the transportation of certain goods belonging to Bomix from the port of Baltimore, Maryland for discharge at the port of Salvador, Brazil. A true and correct copy of AIL bill of lading no.

AILW8644992, dated December 7, 2008 is attached hereto as Exhibit 1. A true and correct copy of the Terms and Conditions for AIL's bills of lading is attached hereto as Exhibit 2.

- 37. AIL bill of lading no. AILW8644992, dated December 7, 2008, provided among other terms the following:
 - 1. (**Definitions**) When used in this Bill of Lading (A) "Ocean Carrier" means American Independent Line, Inc., which performs the sea carriage of the Goods, and the vessel, her owner, and demise charterer, whether any of the preceding parties is acting as carrier or bailee.

* * * * *

- (E) "Merchant" includes the shipper, consignor, consignee, owner, and reciver of the Goods and the holder of this Bill of Lading.
- (F) "Goods" means the cargo described on the face of this Bill of Lading and, if the cargo is packed into container(s) supplied or furnished by or on behalf of the Merchant, include the container(s) as well.

* * * * *

- 2. (Clause Paramount) . . . (B) If this Bill of Lading covers Goods moving to or from ports of the United States in foreign trade, then carriage of such goods shall be subject to the provisions of the United States Carriage of Goods by Sea Act, 1936, 46 U.S.C. P1300-1315 as amended (hereinafter "U.S. COGSA"), the terms of which shall be incorporated herein. The provisions of U.S. COGSA shall (except as otherwise specifically provided in this Bill of Lading) govern throughout the time when the Goods are in the custody of the Ocean Carrier and any other water carrier and as otherwise provided in this Bill of Lading.
- 38. Pursuant to Clause 2 of AIL bill of lading no. AILW8644992, COGSA (46 U.S.C. § 30701 (notes)) governs the rights, duties, responsibilities, limitations and defenses of the parties herein.
- 39. In addition, COGSA applies to and governs the rights, duties, responsibilities, limitations and defenses of the parties to the shipment of goods in question by its own force and effect.
 - 40. COGSA 46 U.S.C. § 30702 entitled "Application" provides the following:

(a) In general. - Except as otherwise provided, this chapter applies to a carrier engaged in the carriage of goods to or from any port in the United States.

COGSA, therefore, applies to "all contracts for carriage of goods by sea to or from ports of the United States in foreign trade." 46 U.S.C. § 30701 (notes § 13).

- 41. 46 U.S.C. § 30701, notes § 1(a) and 1(e) entitled "Definitions" provide:
- (a) The term "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

* * * * *

- (e) The term "carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.
- 42. 46 U.S.C. § 30701, notes § 2 (formerly 46 U.S.C. § 1302) entitled "Duties and rights of carrier" provides:

Subject to the provisions of section 1306 of this title [section 6 of this note], under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in sections 1303 and 1304 of this title [sections 3 and 4 of this note].

43. COGSA 46 U.S.C. § 30701, notes § 3(6) (formerly 46 U.S.C. § 1303(6)) entitled "Responsibilities and liabilities of carrier and ship" provides, in relevant part:

In any event the carrier and the ship shall be discharged from all liability in respect of loss and damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. *Provided*, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

44. COGSA 46 U.S.C. § 30701, notes § 4(5) (formerly 46 U.S.C. § 1304(5)) entitled "Rights and immunities of carrier and ship" provides, in relevant part:

Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount

exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

- 45. Upon information and belief, defendant Bomix disputes the applicability and enforceability of COGSA, in particular 46 U.S.C. § 30701, notes §§ 4(5) and 3(6), as they would be applied to AIL's bill of lading no. AILW8644992, dated December 7, 2008.
- 46. Geodis Wilson USA, Inc. ("Wilson USA") engaged AIL, a non-vessel operating common carrier ("NVOCC")¹ to arrange transport of two packages from Baltimore, Maryland to Salvador, Brazil: one 40' flatrack container (container no. SUDU 970-13-3) containing a plastic injection molding machine and one 20' standard container (container no. IPXU 399 852-5) containing a plastic injection molding machine. AIL issued bill of lading no. AILW8644992, dated December 7, 2008 for carriage of the two packages with Wilson USA as the shipper and GW Gerenciamento de Fretes-Brazil as the consignee. Brasil Cargo Services Logistica Ltd was indicated as the notify party.
- 47. AIL in turn contracted with plaintiff Hamburg-Sud North America, Inc. ("HSNA"), a ship operator and owner to provide ocean carriage of the two packages aboard the vessel *Libra Corcovado*. HSNA issued its own bill of lading no. SUDU280017845018, dated December 7, 2008 for the two packages with AIL as the shipper and AIL's agent in Brazil, Brasil Cargo Services, as the consignee.
- 48. The *Libra Corcovado* sailed from Baltimore, Maryland with the two packages onboard on December 7, 2008.

¹ A NVOCC "means a common carrier that-- (A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier." 46 U.S.C. § 40102.

- 49. On December 11, 2008, AIL received notice from HSNA regarding an accident occurring in Norfolk, Virginia involving the 40' flatrack container (container no. SUDU 970013-3) containing one of the plastic injection molding machines.
- 50. On April 12, 2010, an action was filed in Salvador, Brazil by Bomix against Milacron Equipamentos Plasticos Ltd, GW Gerenciamento de Fretes- Brasil, and Hamburg Sud Brasil Ltda for damages resulting from the incident in Norfolk, Virginia involving SUDU970013-3 (one 40' flatrack container) and the plastic injection molding machine contained therein ("Brazilian Action").
- 51. As a common carrier for the cargo for which Bomix is claiming damages and that was shipped pursuant to AIL bill of lading no. AILW8644992, dated December 7, 2008, AIL is a potential defendant in the Brazilian Action.
- 52. In the Brazilian Action, Bomix has sought the application of Brazilian (civil) law regarding strict liability. Specifically, Bomix is claiming for material damages in the amount of US\$523,149.61 for material damages as well as loss of earnings at R\$35,400.36² per day, and R\$500,000 for "moral" damages. Bomix has not recognized the \$500 package limitation contained in COGSA 46 U.S.C. § 30701, notes § 4(5) (formerly 46 U.S.C. § 1304(5)) or the one-year statute of limitations contained in COGSA 46 U.S.C. § 30701, notes § 3(6) (formerly 46 U.S.C. § 1303(6)).
- 53. Thus, Bomix, the ultimate consignee and owner of the goods shipped under AIL's contract of carriage disputes and denies that COGSA would govern AIL's rights, duties, responsibilities, defenses and limitations during the period of the carrier's responsibility for the goods shipped under the contract of carriage, and/or that the carrier shall not in any event be liable for any loss or damage to or in connection with transporting the shipper's goods in excess

² According to the August 1, 2011 online Wall Street Journal, 1 Brazil real = US\$0.6451.

of \$500 per package or customary freight unit. Bomix further disputes and denies that the carrier shall be discharged from all liability in respect to loss or damage unless the suit is brought within one year of the delivery of the goods or the date when the goods should have been delivered.

- 54. Where there is a controversy as to the meaning and effect of a written contract, a party to the contract may seek interpretation by means of a declaratory judgment of a court having jurisdiction over the parties.
- 55. A proceeding in the nature of a declaratory judgment is a form of remedial procedure which is particularly appropriate where the basic issue underlying the claim of the plaintiff is the interpretation or construction of a contract.
- 56. The basic issue is whether AIL is entitled to limit its liability for any damage or loss to \$500 per package or customary freight unit of the goods shipped.
- 57. Bomix's position that Brazilian civil law applies to its claim for cargo damage to the exclusion of COGSA, including 46 U.S.C. § 30701, notes §§ 4(5) and 3(6), presents a matter of actual controversy by and between the parties and raises a question of the validity of the entire contract of carriage, thereby entitling AIL to the relief sought.

PRAYER FOR RELIEF

WHEREFORE, Defendant/Respondent/Petitioner AIL demands a declaratory judgment pursuant to 28 U.S.C. § 2201, finding that AIL's contract of carriage is wholly valid and enforceable and that COGSA, in particular 46 U.S.C. § 30701, notes §§ 4(5) and 3(6), are valid and enforceable against defendant Bomix and that Defendant/Respondent/Petitioner AIL is entitled to a judgment declaring that any and all liability which may be found for the loss or damage to the goods may be, and hereby is, limited to the \$500 per package limitation provided

by COGSA § 30701, notes § 4(5) for each box or package of the goods which was shipped under AIL's contract of carriage, AIL bill of lading no. AILW8644992, dated December 7, 2008.

Dated:

New York, New York

August 3, 2011

HOLLAND & KNIGHT LLP

By:

Francesca Morris Lissa D. Schaupp 31 West 52nd Street

New York, New York 10019 Telephone: 212-513-3200 Telefax: 212-385-9010

E-mail: francesca.morris@hklaw.com lissa.schaupp@hklaw.com

Attorneys for Defendant, American Independent Line, Inc.

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

DAVID MOFFITT, being duly sworn, deposes and says:

That I am the Treasurer for defendant American Independent Line, Inc., that I have read the foregoing Verified Answer and Verified Cross-claim/Petition for Declaratory Judgment and know the contents thereof; that I know it to be true except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

DAVID MOFE

Sworn to before me this

NOTARY PUBLIC

RICHARD M. AVIDON
NOTARY PUBLIC. State of New York
No. 52-5131080
Cuelified in Suffolk County
Constitution Expires Sept. 30, 134

EXHIBIT 1

DILL OF LADING

FOR COMBINED TRANSPORT AND PORT-TO-PORT SHIPMENT

Independent	Line	BILL OF LADING	AND FORIST	FMC 14062 N
PPER EXPORTER (COMPETE NAME AND ADDRESS) GEODIS WILSON USA, INC. 7513 CONELLEY DR. HANOVER, MD 21076		BOOKING NO.	BILL OF LADING NO.	
		AI8644992 EXPORT REFERENCES BAL23000011	AILW8644992	
WSIGNEE (COMPLETE NAME AND ADDRESS)	FORWARDING AGENT F M C NO.	FMC#224 CHB #34	126
GW GERENCIAMENTO DE FRETES-BRAZIL CNPJ:52.147.923/0001-74 RUA CANTAGALO 1391-VILLA GOMEZ SAO PAULO SP 03319-001 BRAZIL		GEODIS WILSON USA, INC. 7513 CONNELLEY DR. SUITE I HANOVER, MD 21076 USA		
		POINT AND COUNTRY OF ORIGIN OF GOODS		
OTIFY PARTY (COMPLETE NAME AND ADDRESS)		ALSO NOTIFY - ROUTING & INSTRUCTIONS		
PRE-CARRIAGE BY	PLACE OF RECEIPT BY PRE-CARRIER *	FOR RELEASE CONTACT: BRASIL CARGO SERVICE LO PRACA BARAO DO RIO BRA CENTRO - SANTOS/SP - BRI TEL: 55 13 3219-9400 FAX: 5 ATTN: ANTONIO MENDES / /	NCO, NR 14-7 AND. ASIL - CEP: 11010-0 55 13 3219-9771	140
EXPORTING CARRIER	PORT OF LOADING	LOADING PIER / TERMINAL	· · · · · · · · · · · · · · · · · · ·	
Libra Corcovado V.42S	Baltimore, MD			····
ORT OF DISCHARGE	PLACE OF DELIVERY BY ON CARRIER *	TYPE OF MOVE PORT TO PORT CY		•
Salvador	PARTICULARS FUL	RNISHED BY SHIPPER		
MRKS & NOS/CONTAINER NOS NOS OF PI	· · · · · · · · · · · · · · · · · · ·	ACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT
SUDU 970 013-3 TARE WEIGHT 5250 KG IPXU 399 852-5 SEAL: 2491014 TARE WEIGHT 2200 KG	MILACRON POWERLINE M PLASTIC INJECTION MOLE 1 20' STANDARD CONTAINE MILACRON POWERLINE M	40' FLATRACK CONTAINER SLAC 1 BOX MILACRON POWERLINE MODEL NT550-54 PLASTIC INJECTION MOLDING MACHINE 20' STANDARD CONTAINER SLAC 1 BOX MILACRON POWERLINE MODEL NT550-54 PLASTIC INJECTION MOLDING MACHINE		96.192 CBM 5.330 CBM
BOMIX IND.	NCM#8477.10.11 FREIGHT PREPAID	, , , , , , , , , , , , , , , , , , ,		1
VIA SALVADOR		ON BOARD LIBRA CORCOVADO V.42S AT BALTIMORE, MD		
	AES X20081117022835			
THE UNITED STATES IN A	CHNOLOGY OR SOFTWARE WERI CCORDANCE WITH THE EXPORT A N CONTRARY TO U.S. LAW PROH	ADMINISTRATION COPY	NON-NEGO	TIABLE
OCEAN FREIGHT AND CHARGES		SHIPPERS DECLARED VALUE S AS PER TARRIFF AND CARRIERS LIABILITY LIMITS (SEE CLAUSE 17 OVERLEAF) SUBJECT TO EXTRA FREIGHT		
FREIGHT PREPAID 40' FR X 1 \$6980.00 USD 20' STD X 1 \$1530.00 USD TOTAL \$8510.00 USD 8eceived by the Carrier from the shipper in apparent good order a (unless otherwise noted herein) the total numbers or quantity of cother packages or units indicated above, for transportation subject to hereof (including the terms on the reverse hereof) from the place of report of loading, whichever applicable, to the port of discharge or				itity of containers o ubject to all the term: lace of receipt or the

DESTINATION THC COLLECT

port of loading, whichever applicable, to the port of discharge or the place of delivery, whichever applicable. All subject to the terms appearing on the face and back of this Bill of Lading and the Carriers applicable tariff.

IN WITNESS WHEREOF, THREE (3) ORIGINAL BILLS OF LADING, ALL OF THE SAME TENOR AND DATE, HAVE BEEN SIGNED, ONE OF WHICH BEING ACCOMPLISHED, THE OTHERS TO STAND VOID.

AMERICAN INDEPENDENT LINE, INC., AS CARRIER

ON December 7, 2008 DATED AT GREAT NECK, NY

FMC No. 14062N

^{*} APPLICABLE ONLY WHEN DOCUMENT USED AS A COMBINED-TRANSPORT BILL OF LADING

EXHIBIT 2

RECEIVED by the Ocean or inland Carrier from the monthant in apprecial good order and condition unless otherwise indicated, the Goods, or the containing or producingly said to contain the Goods, to be carried analysed to at the forms on the Care and back of this Still of Listing, from the place or broight or the port of basing to the port of declarage or place of claiming, then the place of declarage, then the declarage or place of claiming, duty endosted must be assembled in exchange for the Goods or delivery order. Note of the joint of this Still of Lading can be retired by or for the Cocan Carrier except by express variers rigned by a day sufficient still only the Cocan Carrier of the Goods or delivery order.

- 1. (Definitions) When used in this BR of Lading (A) "Ocean Carrier" news American independent Line, inc., which performs the sea cardage of Goods, and the wessel, her owner, and derrise charterer, whether any of the proceeding parties is acting as carrier or habor.
- (6) "faland Carrier" means carriers (other than the Ocean Carrier) by land, water or air, participating in combined transport of the Goods, whether acting as carrier or ballee.
- (C) "Combined Transport" means carriage of the Goods under this BRI of Lading from place of receipt from merchant to place of delivery to Merchant by the Ocean Carriers plus one or more Island Carriers.
- (D) "Port-to-Port Transportation" means carriage of the Goods under this Bill of Leding other than combined transport
- (E) "Merchant" includes the shipper, consignor, consignee, owner, and receiver of the Goods and the holder of this Bill of Lading
- (F) "Geods" means the cargo described on the face of this Bill of Lading and, if the cargo is packed into confutiner(s) supplied or furnished by or on behalf of the Merchant, include the confainer(s) as well.
- (G) "viesser" includes the viessed named on the face of this Ball of Lading and any ship, craft, lighter, barge or other means of transport that is substituted in whole or in part for that vosset
- (H) "Container" includes any containers (including an open top container) flat rack, platform, trailer, transportable tunk, pallet or any other device used for transportation of goods.
- (i) Tuedon on Boset* or similar words andersed on this Bill of Lading manes that the Goods have been loaded on board the Vesses or are in the custody of the Ocean Carrier, and in the event of Combined Ticrosport if the originating carrier is an intend Carrier. "On Boart* Timese pital tile Condo here been teaded on board rail cars or other means of inland carriage or are in the custody of a patholpating nairood or other inhand Center.
- (J) "Subcontractor" includes stevedores, longshovemen, lighterers, tentinal operators, wavehousemen, truckers, agents, servants, and any person, firm, corporation or other legal antity which performs remices incidental to the curriage of the Goods.
- (K) "United States" or "U.S." means the United States of America.
- 2. (Clause Petermount) [A] Indick as this Bit of Lating corner cernispe of Goods by water, this Bit of Lating shalf have effect selepts the permission of the "Hope Relatin", namely the international Cornections to the Unification of Certain Fullish Relating to Sible of Lating, do dated at Exception, 1992, 25, 1998, Income as the Visity Rules), as marked in the country of disponent. When no exch exactament is nit seen in the country of simponent or in other restrictions, or applicable, the stream of the international continuous applicable, the Relating Relating and the international continuous and the country of disponent, which is not the restriction shall apply Relating Relating International Continuous Relating Relati
- (Line and Abriadiction) Whenever the Caniage of Groots by See Act 1036 (DOSGA) of the United States of America applies, this covered is to be governed by United States Lew, and the United States Federal Court, southern District of liver 9th 5th Inverentations junicidately to ad deputies foremance, in an offer cause the Bird II cultury states or the principle of t
- 4. (Limitation of Liability Statutes) Nothing is this BII of Lading shall operate to limit or deprive the Ocean Carrier of any statutous protection, exemption from, or kinitation of liability authorized by the applicable laws, statutes, or regulations of any country.

5.(Sub-Confracting): Exemptions and Immunities of Solv Confracting: Exemptions and Immunities of Solv Confracting: Exemptions and Immunities of Solv Confracting (Fig. 2). The Ocean Corrier skills be entitled to subconfract on any sense the whole or part of the handling strange, or conner of the Goods and disches phistocore understain by the Ocean Corrie is related to the Goods (G.) Merchand search that no desire date the made against any subconfractor (as defined in Article 1.1), or Subconfractor, of Ocean Corrier complete that control is made against any subconfractor (as defined in Article 1.1), or Subconfractor, of Ocean Corrier complete that control is made against any subconfractor (as different in Article 1.1), or Subconfractor, of Ocean Corrier to Subconfractor (as different to Corrier to Subconfractor) and the Corrier corrier to subconfractor of subconfractor (as different to Subconfractor) and the Corrier to Subconfractor (as different to Subconfractor) and the Corrier to Subconfractor (as different to Subconfractor) and the Subconfractor (as different to Subconfractor).

about in interest of start subconstruction.

(Rocate for Transport) (A) The Goods may, at the Ocean Carriers absolute decretion, be carried as a single shipment or as severe all planned by the vision of another profits of sampler of the severe all planned by the vision of another profits of the severe all planned by the vision of another profit of the severe all planned by the vision of the vision of the severe all planned by the vision of the visi

tel benefit of all prindings, rights, and immunities contained in this Bill of Leding.

7. (Responsibility) (A) teoder as the Bill of Leding is used for Purish-Brit's Temporation of the Soods, the Open Centre shall not be responsible for loss of or damage in the Goods caused below sension or side rickings. To Leding that the deemed or commence with the thoughing on the responsible to the Goods caused below sension or affect rickings. To Leding that the deemed or commence with the thoughing on the responsibility of the Goods caused to the Goods caused caused to the Goods caused to

The such handling always or carriago occurred in or between prists in Europe, or whose orthonics applicable, such responsibility shall be greened (a)? If yeard by the Convention on the Contract for the informational Carriage of Goods by Road, dated the May, 1956 (CRIN); (b) if by milk, by an international Carriage of Goods by Paid dated 25 February, 1951 (CRIN); (c) if by the Price Convention in the bilination of Carriage of Goods by Paid dated 25 February, 1951 (CRIN); (c) if by the Price Convention in the bilination of Carriage (Paid Convention); (d) if it is entered to Paid Carriage (Paid Convention); (d) if it is entered to Paid Carriage (Paid Convention); (d) if it is entered to be the Medicart that intelligent in the Social Convention); (d) if it is entered to be the Medicart that intelligent in the Social Convention); (d) if it is entered to be the Medicart that in the Medicart that medicart convention that the Convention tha

Ocean Carrier's responsibility for five Goods shalf in all coses cause at the firm of discharge of the Goods at the port of discharge.

8. (Litterfield) (A) in any situation inhaltoners whether or not adding or any displaced forbire commissioners of or darking the transport, which is the largement of the Doors Carrier's Country first the purpose of this first the leaders and only present Charges with the transport or indebtoring or any contribution of the Book of the Country and the Countr

(8) The Mentions shall relations the Costan Carrier forthwith upon designed to all sets freight charges and opposes incurred for any actions labers according to subpart (A), excluding thinly or superess in the Yessel, and the Costan Carrier and Heave a temporary for the Costan Carrier and Heave and Heave a temporary for the Costan Carrier and Heave and Heave a temporary for the Costan Carrier and Heave Benefit to comply with orders, denoting on the Costan Carrier and Heave Benefit to comply with orders, denoting on the Costan Carrier and Heave Benefit to comply with orders, denoting to the profession or suggestions as to make substitute to the carrier for the Medical Period Heave Benefit to comply with orders, denoting the Costan Carrier and positions and the Costan Carrier and Heave Benefit to comply with orders, denoting the Costan Carrier and position and the Heave Benefit to comply with orders, denoting the Costan Carrier and position and the Period Heave Benefit to comply with orders of the Costan Carrier and position and the Period Heave Benefit to comply with orders of the Costan Carrier and position denoting the Costan Carrier and Period C

8. (Description and Particulars of Goods) Any reference on the size of this Bid of Leafing to marks, musbes, description quarties, quality, gavey, variety, measure, marks, while, and are ofthe particulars of the Goods, is as shrewhood by the Mortalm. The Ocean Camin's shall not be responsible for the accuracy of any and reference and is not bound friendly. The Mortalm resimises to the Ocean Camin's shall not be responsible for the accuracy of any and reference and is not bound friendly. The Mortalm resimises to the Ocean Camin's gained at the descriptions applications in selected by their secretic and per Mortalm distinct and year. One of the Caming the Ocean Camine gained all loss, damage, openioses, fabrilly ponelies and times artising or resulting from inaccuracy or any description or particular.

10. (Use of Container) When the Grods are not already packed into a container at the time of receipt by the Ocean Carrier, the Ocean Carrier shall be at liberty to pack and carry the Goods in any type of container.

11. (Deean Gurrier's Container) (A) The Merchant assumes but responsibility for and shall extended the Ocean Carrier against any loss of ordinarys to the Ocean Carrier's containers and other equipment if the loss or damage is owned or occass while in the opposition of the Merchant A sugarth, or common centre entaiged by or in wheth of the Merchant (B) The Ocean Carrier dail rise even the tight for and the Merchant shall indemnity and hold the Ocean Carrier teatmins from, any death of or illusives to persons, or loss of or damage to property, claused by the Ocean Carrier sharmins from, any death of or control of the Merchant, life signals, or common carrier and open or occated of the Merchant, life signals, or common carrier and good for or obtained of the Merchant, life signals, or common carrier and good for on challed of the Merchant.

son at contrar of the receivant, it is against, or common carmins engaged or you no natural and an executary.

1. (Constainer Packado by Merchmoll if the cargo received by the Coosen or histand carries in a conditional packad by or on behalf of the Merchand CA (A) This ER of Lifeting, in prima table evidence of the except only of the number on the laces of this ER of Lifeting.

The condition and particulates of the contents are unknown to the Coosen and Material Carriers, and the Coosen Carrier complet on responsibility for the actual carriers and packadors and continuers and the software of the contents are suitable for the activity of the contents are suitable for the activity of the contents are suitable for the rectification of the contents are suitable for the contents and the rectification of the contents are suitable contents are contents are suitable contents are properly electrical the Coosen (carriers and activities and the Merchand and the Coosen Carriers and a suitable content in the term of the containers are suitable contents are suitable contents are also activities and a suitable content in the participation of the contents are suitable contents and suitable contents are also activities and activities are suitable contents and activities activities and activities activities and activities activities and activities activities activities activities activities activities activities activities activities activi

resulting loss, damage or appearance.

2. (Special Carriage or Container) (A) The Ocean Carrier does not undertable to carry the Goods in self-geneted, heated, installed, verifiling, or any other special for container, not to carry they special container protect by or or behalf of the Medicinar, but the Ocean Carrier will need such docods or container only as ordinary goods and or container, respectively, unlose, (1) appeals arrange relative to the carrier and excell foods of container have been imposed to in writing relatives in Ocean Carrier and Carr

No consistent, consistent of the Constant Constant containing to carry Goods of an explosive, inflammable, resistantly, consistent, damaging potentials, or dangerous nature only upon the Ocean Carrier's approval of a writine application by the Constant of the carriery of the Constant Constant of the carriery of the Constant of the C

In Storage Under and on Deck) (A) Goods in containers, sans, trailes, or chaste may be quinted under deals or on deck and hoods are carried and or deck the Open Capifer field not be regarded to specially not install, or signify any stakement of recitable containers, and the best of the trailer field and the properties of the containers of the context promote that or great part stakement of recitable deck thoses the size of the Book stakement of the context promote that the size of the context of the size of

16. (Live Aminate and Plants) With respect to the custody and carriage of live animats and plants, all fasts of loss or damage by pertis inherent in or incident to such carriage shall be bent by the Mexichant, and in all other respects the Ocean Carrier shall have the benefit of the provisions of the opticiation, writing of the Heigen Rules (pechating U.S. COSSA, notwithstanding Section 1901(c)). Thereof, and the first that the Significant Carrier shall be seen the control of the Carrier shall be seen that the section of the Carrier shall be seen that the section of the Carrier shall be seen that the section of the Carrier shall be seen that the section of the Carrier shall be seen that the section of the section

17. (Valuable Goods) The Ocaan Carrier shall not be fable to any extent for any loss of or damage to or in controlled with precious reads, stores, or chemicals, levening, compress, negotiable instrements, securities, writings, documents, works of any, control, heldrogen, or any other teakeling book, faculding goods, heighing particles read only fair the Merchant, alleast, the hour names any value of the Goods have been declaration writing by the Nectoral before receipt of the Ocotob by the Ocean or haland chair, the same is thereof on the loss of this Birl of Laffing and additional fright labe been good are reported.

18. (Heavy LIII) (4) The weight of a single pleas or package exceeding 2,240 bits, gross must be declared by the Menchant in whiting below receipt by the Ocean or inland Currier and must be marked classify and durally on the outside of the piece or peackage internal and digenor on the State have below bits. (18) the Mechant this in this obligation under the operation grants (1) the Ocean Currier shall not be responsible for my time of or demaps to in connection with the Ocean. Currier shall not be responsible for my time of the demaps to in connection with the Ocean. Currier state of the Ocean Currier state

16. (Delivery by Marka), (A) The Cosen Carrier shall not be listed for failure or delating desirery in accordance with marks, unless such marks here from death grant destribly transport or ventried upon the Goods, partiage, or considered by the feterbast referred sea, and an extract here is destribled to the control test of the Goods and hard Center is eletter, and marks not refer set has the control test (b). Equation where the feter set of the port of destraps and place of destribe) (B) in no circumstances that it no Center Center be reported for testings in accordance with other hard between extract testings and control testings and control testings and control testings are the CPU factor and also in all rescords comply with all less and regulations in force at the port of destrups or place of delating. The Merchad and inflaming the Center Center explaint of loss, change or exponses realizing from increasing violations and an expension of the control testing of the control testing of the control testings or the control testing of the control of the control testing of the control of completing delivery to the various Merchants of Googst of Rec character in proportion to any apparent shortage, jost of weight or demands.

chartest of Goods of Neo characteris in proportion to any apparent shortage, loss of weight or desarray.

20. (Bellivery) (A) The Ocean Carrier's shell have the sight to desire the Goods at any line at the Vessels side, cantomicous, which the geographic lettes of the port of declarage or pleas of deshey shown of the biss of this poll of language (B) The Ocean Carrier's responsible; shall cosses when the Goods have been delivered by the Microsoft of the Costo of the Microsoft of Costo of Mechanish behald at the place designated by the Ocean Carrier to any other pations designed by the Ocean Carrier's the Goods of the castody of customs or any other pations do cost and Mechanish behald at the place designated by the Ocean Carrier's the Goods of the castody of customs or any other pations all constitutions and discharge of the Ocean Carrier's the Goods of the Costody of customs or any other pations all constitutions packed by or on behalf of the Mechanish (I) The Ocean Carrier's all only be responsible for delivery of the fold number of oceanishes where the Costod of the Costod Carrier's the Costod Carrier's one of the Ocean Carrier's the Ocean Carrie

have been discharged, and the Ocean Cerniar shall not be respeciable for any loss or damage to the contents of the contains. (5) Optional defining shall be granted only when arranged prior to the time of receipt of the Goot by Ocean Cerniar and if expressly stated on ne Face or the Still of Lating. The Method of Central to shall be granted to provide a contained and the contained on the Still of Lating. The Method of Central to shall be grant of the option on expression shall be shall

21. (Transabilipment and Fourwarding) (A) Whether arranged beforehand or not, the Coose Cartier shall be at Rochy without studies to carty the Goods shading to entitle the manufacture and Vessel, cost burge, or other means of transpat by within and or six, stateber or not owned or operated by the Coose Cartier (B) The Coose Cartier may under any circumstances windowers or six, stateber or not owned or operated by the Coose Cartier (B) The Coose Cartier may under any circumstances windowers and bown by any means of transpat (C) II the Coose's same be transpat entered and so that discuss part to discuss part to delivery of B may be indicarrated, Moy, when bound, may be becaused to their intered pot not descharge or place of determy at the Coose Cartier's property of the Coose Cartier's the Coose Cartier's and Coose Cartier's and exhibition and one control of the Coose Cartier's and t

22. (Fire) The Ocean Carrier shall not be responsible for any loss of or damage to the Goods arising from fire occurring at any firms, even though before loading on or after discharge from the Vessel, unless caused by the actual leaft or privity of the Ocean Carrier

2. (Lien) (A) The Ocean Carrier was unbasing more with Yease), unsets dealed by the actual little of privity of the Ocean Carrier (2.1), (Lien) (A) The Ocean Carrier shall have a lien on the Goods, which shall survive deliving, for all rivigit, deed freight, describing, and describes, both charges, presents, and only life some (selecting code), coations lets, altimate jees, and other lets of mecowine give some) described to the Merchant under this SB of Ladios and any preferencing contract for casting of the Goods. One closure may reduce been been by selfing the Goods without office to the Merchant privately or typically audion. If on said of the Goods has proposed fall to over the amount due and the codes and lees knurred, he Coesa Carrier shall be coded in the Goods without office the recover the defact on the Merchant (3). If he Goods are unbiased during a massicable time, or relevance in the Ocean Carrier shall be come of the Goods and the code of the Goods and the code of the Goods and the code of the Goods and the Go

high at a description and subject to its term, and, plasterinous, or otherwise dispose of such Goods at the sole risk and expected of the Metabalist.

24. Firefulation of the Section of the Section Confirm the accordance of the personal control of the Section Confirm the accordance of the control of the Section Confirm the accordance of the control of the Section Confirm the accordance of the Control of the Section Confirm the accordance of the Control of the Section Confirm the Se

25. [Notice of Claim and Time for Suit against Ocean Carrier | An Universe ropice of loss or durrage and the general nature of such loss or durrage but given in writing is the Ocean Carrier of the port of discharge or place of delivery before or at the time of delivery of the Goods or, if the loss or damage is not appeared, within 3 days after descripted in the disciple of between the large loss delivery of an advantage of the last light in respect of the docks, including without institution may be a suitable to descript of the state of the disciple in respect of the docks in studies without institution on delivery of the Goods or the developed from a strike the process of the developed from the ocean for t

All full-stated or Labelthy (4) Subject to subpart (8) between to the purpose of the control of the state of the Course Contracts (1) the Course of the Course Course of the Course Course of the Course of the Course of the Course Course of the Course Course of the Course of the Course Course of the Course of t

All News the cappe has been peaded into a container unification on anima criticle of transport by on on healest of the Montains, it, it is expressly agreed the number of such containers or children strained of transport allows on the bree of this Bit of Luthrap deal be contained as the multiple of the peadegree or units for the peadegree or the applications of the alministrate of the participation of the alministrate of the peadegree or units for the peadegree or the applications of the alministrate of the alministrate or the peadegree or units for the peadegree or the applications of the alministrate of the alministrate or the peadegree or units for the peadegree or the applications of the alministrate or the alministrate or the peadegree or units for the peadegree or the applications of the alministrate or the peadegree or units for the peadegree or the applications of the alministrate or the peadegree or units for the peadegree or the alministrate or the peadegree or the alministrate or the peadegree or the applications of the alministrate or the peadegree or the applications of the alministrate or the alm

27. (General Avvirage: New Jason Closuse) (A) General average shall be adjusted, stated and settled at any port or place as the Cosen Carrier's option and according to the York-Asherin Pikels., 1954 and as to matters not provided by by these Pikels, according to the York Asherin Pikels. 1954 and as to matters not provided by the Ocean Carrier. The general swrape addressment all be prepared by the adjustes appointed by the Ocean Carrier. The general swrape addressment all be prepared by the adjustes appointed by the Ocean Carrier. The general swrape adjusted by the Ocean Carrier any down additional to over the estimated contribution of the Goods and asy schege and special deposit as the Ocean Carrier any down additional to over the estimated contribution of the Goods and asy schege and special deposit as the Ocean Carrier to the Section of the United Section (Section Carrier Individual Section Section Carrier Individual Section Section Carrier Individual Section Se

28. (Both to Bisme Collision) if he Vessel comes into collision with another ship as a result of the repligence of the other ship and any set, region. Or obtant of the Master, martine, place, or servents of the comer of the Vessel in the contribution or in the management of the Vessel. He Machant shift informity the Colonic correct against all loss or shighly rethin might be increased fromly in the colonic strategy of the colonic strategy in the colonic strategy in the bism of the Master shift in the colonic strategy in the colonic strategy in the colonic strategy in the different colonic colonic strategy in the colonic strategy in colonic strategy in the colonic strategy in the colonic strategy or participated in the colonic colonic strategy or other accident.

29. (Certifage of Metal Products, Lumber, Cotton) (A) The term "apparent good order and condition" when used in this Bill of Lading discussion exact. (I) with interests is two, seed, is made products, guid the Goods when rebelled were the leg from hidden and or notedom. (2) with reference to lambot, inhost pieces of order through products, that the Goods when rebelled were free from visible statins, discribed in, michales, "mixes, boint, pulmed, breakage or galifate," If the Metal are represent a substitute Bill Lading will be assisted, and the second products are substitute Bill Lading will be assisted setting from any reclaims as to the foregoing that may appear on the marks to tally derive products and any control of the control of the control or class to the sections of the control or other care product and the lading the control or the control or of the care product and the lading the control or of the care products and the section of the covering not to any durange, resulting therefrom. Ocean Camier shall not be responsible for any such damage.

30. (Grain) Discharge of grain received by the Ocean Carrier in bulk may be in port, on barges, and or lighters, or elsewhere, using on not using elevations, and such discharge shalf constitute a sufficient delivery by the Carrier. Thereafter said grain shalf be all the risk and suppose of the Metchant.

31. Untermodal Transportation) (A) Trits Bill of Lading may be issued for Intermodal Transportation in any country. When on issued as between the Mental and an Internal Currier cettledy and carriage of the Goods by the Internal Currier are subject to the Control and Currier cettledy and Currier and Currier cettledy and Currier and Currier cettledy and Currier a

32. (Ocean Carrier's Tertify This State Listing is subject to the Ocean Carrier's applicable lastiff. Copies of the applicable taniff are obtainable from the Ocean Carrier upon request.

33. (Severability of Terms) The terms of this Bill of Lading are severable and if any part or term is declared invalid or unerslorceable, the validity of enforceability, of any other part or term shall not be affected.

34. (Histolary Charuss) All ecceptions, examplions defended Immunities, limitations on liability, privileges and conditions granted or protected by this Bild of Ladings or by applicable term for by status or for the benefit of the Carrier dual liabs apply to and/or the benefit of all the officers and enaphyses of the Conferie and the agents, officers and over the Viscos and not end for the benefit of all the officers and the original officers and over the Viscos and the original officers of each of present.